IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/06/2004

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THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

Habeas Corpus Petition No.605 of 2004

Dr. Thomas M. Vinoth .. Petitioner

-Vs-

1. State rep. by
The Inspector of Police
Thevarkulam Police Station
Sankarankoil Taluk
Tirunelveli District.

2. Superintendent of Police
Kollam District, Kerala State.

3. Choli Kutti Yasudasan
4. George
5. Etty Thoma
6. Jesudasan @ Chacko Thomas .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.D. Balasundaram

For Respondents 1&2 : Mr. Abudukumar Rajaratnam
Additional Public Prosecutor

:O R D E R

(The order of the Court was made by
P.D.DINAKARAN, J.)

The petitioner seeks a writ of Habeas Corpus directing the respondents to produce person or body of detenues, viz. Alice, his wife aged 38 years, Hema, his daughter aged 15 years and Cherin, his son aged 13 years, before this Court and set them at liberty.

2. According to the petitioner, his wife and children are under the

illegal custody of respondents 3 to 6, who are residing at Kerala, viz. outside the jurisdiction of this Court and his specific case is that he is prevented by respondents 3 to 6 to see them.

3. It is also not in dispute that the petitioner, on an earlier occasion, filed HCP No.1070 of 2003 for the same relief, which was disposed of by this Court, by order dated 21.7.2003 as follows:
" Learned Additional Public Prosecutor makes a statement that the children who were allegedly kidnapped are safe with their mother. If the petitioner so feels, he may move proper authorities for taking the custody of the children. On the face of it, the petition is not maintainable. The petition is dismissed. "

4. It is trite law that exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under Sections 97, 98 and 100 of the Code of Criminal Procedure is always used. Then there is the remedy of a Civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact have first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercised in a clear case, vide Mohd. Ikram Hussain v. State of U.P., (1964) 5 SCR 86 = AIR 1964 SC 1625.

5. That apart, concededly, respondents 3 to 6 are residing outside the jurisdiction of this Court. Hence, finding it difficult to grant the relief as prayed for, this petition is dismissed, however, with liberty to the petitioner to move the authorities concerned for taking custody of his wife and children, in accordance with law.

Index : Yes
Internet : Yes

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To

1. The Inspector of Police
Thevarkulam Police Station
Sankarankoil Taluk
Tirunelveli District.

2. Superintendent of Police
Kollam District, Kerala State.

3. The Public Prosecutor
High Court, Madras.

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